

REMARKS

The comments of the applicant below are each preceded by related comments of the examiner (in small, bold type).

Claim Rejections - 35 USC 112

Applicant has provided support for the limitation "filtering out selected records from the server log" in the specification. Therefore the rejection is now withdrawn.

The applicant notes that proper support for the limitation was provided in the originally filed specification, and that the applicant simply pointed the examiner to appropriate passages of the specification.

Claims 1-5, 11-15, 21-25, 31-38, 40-44, 46-49, 51, 54, 55, 58 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haggard et al. in view of USPN 6,317,787 issued to Boyd et al. in further view of Network Working Group Request for Comments: 1739 submitted by Kessler et al.

(Amended) Regarding claims 1, 11, and 21, Haggard et al. teach a method (claim 1), a system (claim 11), and a computer program (claim 21) for real-time measurement of the performance of communications on a large area network between a selected server and a plurality of users at client machines, based upon actual user experience including accessing a server log having records of actual user access to the selected server (Abstract); aggregating records from the server log into a database (col. 7, lines 22-44); performing at least one statistical analysis of each time bin on each aggregate slot (col. 7, lines 22-44); and outputting the results of such statistical analysis as an indication of actual usage by users (Abstract; col. 2, lines 51-67 - col. 3, lines 1-6; col. 7, lines 23-44; figure 5).

However, Haggard et al. fail to explicitly teach: accessing a server log having records indicative of routings through nodes of the network of actual user access to the selected server, wherein at least one of the nodes is part of a communication path connecting one of the client machines to the selected server; filtering out selected records from the server log; and aggregating records from the server log into a plurality of aggregate slots, each slot having at least one time bin which represents an interval of time, based on an aggregation method; and performing at least one statistical analysis separately of each time bin on each aggregate slot. Kessler et al. teach accessing a server log having records indicative of routings through nodes of the network of actual user access to the selected server, wherein at least one of the nodes is part of a communication path connecting one of the client machines to the selected server and outputting the access-to-server result (Section 2.2 PING, and Section 2.4 TRACEROUTE).

Boyd et al. teach: aggregating records from the server log into a plurality of aggregate slots, each slot having at least one time bin which represents

an interval of time, based on an aggregation method (figure 5; col. 1, lines 27-35; col. 2, lines 5-11; col. 3, lines 47-59; col. 8, lines 37-42); filtering out selected records from the server log (figures 6 and 7, no. 64); and performing at least one statistical analysis separately of each time bin on each aggregate slot (col. 3, lines 47-59; col. 4, lines 10-25).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to access a server log having records indicative of routings through the network of actual user access in order to calculate and monitor throughput of the network, and aggregate records into a plurality of aggregate slots having time bin and analyzing the slots separately in order to identify trends, statistics and other information regarding traffic data (Boyd, col. 4, lines 18-20), therefore, facilitating in analyzing user's experience on the network.

Claim 1 has been amended to clarify that the filtering removes the selected records from further consideration. Boyd neither discloses nor suggests filtering out selected records from the server log as recited in claim 1. Rather, in FIGS. 6-8 and accompanying text in col. 6, line 57 to col. 8, line 7, Boyd describes sorting hits to provide a chronological listing of hits according to the time that the hits were generated. For example, the passage at col. 6, lines 57-60, which is reproduced below for reference, does not mention filtering out selected hits from received hits such that the filtering removes the selected hits from further consideration:

Turning now to FIG. 6, included therein is a sorter 64, which examines the hits in sequence in each of the log files and passes them -- in the chronological order in which each hit was generated -- to a log file analyzer 66.

The sorting step of Boyd is nowhere disclosed or suggested to remove selected records from further consideration as recited in claim 1.

Regarding claims 2, 12, and 22 ...
Regarding claims 3, 13, and 23 ...
Regarding claims 4, 14, and 24 ...
Regarding claims 5, 15, and 25 ...
Regarding claim 31 ...
Regarding claims 32, 40, and 46 ...
Regarding claims 33 and 41 ...
Regarding claims 34, 42 and 47 ...
Regarding claim 35 ...
Regarding claim 36 ...
Regarding claims 37, 43 and 48 ...
Regarding claims 38, 44 and 49 ...
Regarding claims 51, 55, and 59 ...
Regarding claims 54 and 58 ...
Claims 39, 45 50, 53, 57 and 61 ...

Response to Arguments

Applicant's arguments have been considered but they are not found persuasive. In response to Applicant's argument that Boyd neither discloses nor suggest "filtering out selected records from the server log" as recited in claim 1, the PTO respectfully disagrees and submits that Boyd indeed does teach this limitation. As cited above, figure 6 of Boyd includes a sorter, which examines the hits in sequence in each of the log files and passes them to a log file analyzer. According to a definition provided by netlingo, a filter has substantially the same meaning as a sorter. The definition is reproduced below for Applicant's convenience:

filter

A program that examines incoming data to ensure that only information within certain parameters is allowed to pass through. For example, you can filter out e-mail messages based on the sender's information or certain subject lines. A filter is also a program that accepts a certain type of data as input, transforms it in some manner, and then outputs the transformed data. For example, a program that sorts names is a filter: It accepts names in unsorted order, sorts them, and then outputs the sorted names. Basically, it is a means of narrowing the scope of a report by specifying ranges or types of data to include or exclude. Utilities that allow you to import or export data are also sometimes called filters.
[<http://www.netlingo.com>]

Based on this definition, sorting is interpreted as filtering as claimed.

Claim 1 has been amended to clarify that the filtering removes the selected records from further consideration. Furthermore, there is nothing in Boyd or in the ordinary English definition of term "sort"¹ that discloses or suggests that sorting records includes removing selected records from consideration. Therefore, filtering, as recited in claim 1, is not the same as sorting.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

In the response to the non-final office action of June 15, 2006, the applicant pointed the examiner to passages in the specification that teach "filtering out selected records from the server log." The applicant notes that the non-final office action of June 15, 2006 did not consider the applicant's claim amendments from the reply of March 3, 2006, which added the feature of "filtering out selected records from the server log." Rather, in the non-final office action of June

¹ sort

To arrange a collection of items into a specific order. The items could be records, files, directories, or data structures. Sorting orders include ascending or descending, numerical, alphabetical, and chronological.
[<http://www.netlingo.com>]

15, 2006, the examiner simply dismissed those claim amendments as being unsupported by the applicant's specification. The examiner now acknowledges on page 2 of the present office action that the amendments are properly supported by the applicant's specification. As the examiner had ample opportunity to the present the "netlingo" definition and related arguments in the non-final office action of June 15, 2006, the applicant respectfully requests that finality of the present office action be withdrawn.

Independent claims 11 and 21 are patentable for at least the reasons for which claim 1 is patentable. All of the dependent claims are patentable for at least the reasons for which the claims on which they depend are patentable.

Canceled claims, if any, have been canceled without prejudice or disclaimer.

Any circumstance in which the applicant has (a) addressed certain comments of the examiner does not mean that the applicant concedes other comments of the examiner, (b) made arguments for the patentability of some claims does not mean that there are not other good reasons for patentability of those claims and other claims, or (c) amended or canceled a claim does not mean that the applicant concedes any of the examiner's positions with respect to that claim or other claims.

While no fees are believed due at this time, please apply any charge deficiencies or credits to deposit account 06-1050, reference 10559-096001.

Date: _____

2/1/12

Respectfully submitted,



David L. Feigenbaum
Reg. No. 30,378

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110
Telephone: (617) 542-5070
Facsimile: (617) 542-8906